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BEFORE THE ARIZONA CORPORATION COMMISSION

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Chairman

GARY PIERCE
Commissioner

BRENDA BURNS
Commissioner

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Commissioner

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Commissioner

Arizona Corporation Commission
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AZ CORP COMMISSION
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IN THE MATTER OF THE TOWN OF FOUNTAIN HILLS' FORMAL COMPLAINT AGAINST CHAPARRAL CITY WATER COMPANY

DOCKET NO: W-02113A-14-0359

REPLY IN SUPPORT OF CHAPARRAL CITY WATER COMPANY'S MOTION TO DISMISS

The Town of Fountain Hill's Response to Chaparral City Water Company's Motion to Dismiss ("Town's Response"), along with the Residential Utility Consumer Office's Response to the Company's Motion to Dismiss ("RUCO's Response"), ignore the fact that the Town was a party to the just concluded rate case.[1] As a result, both the Town of Fountain Hills ("Town") and the Residential Utility Consumer Office ("RUCO") err in arguing that the Town should be allowed to collaterally attack Decision Nos. 74568 and 74585 (the "Decisions") by filing a complaint pursuant to A.R.S. § 40-246. Because the Town was a party to the rate case, the Town is bound by the provisions of A.R.S. §§ 40-253, 254.01. Those provisions provide the sole recourse for a party to a rate case that is dissatisfied with a decision of the Commission. The Town's and RUCO's proposed reading of A.R.S. § 40-246 undercuts the finality of Commission decisions

[1] The Residential Utility Consumer Office is not a party to this complaint proceeding, and by responding to arguments raised in RUCO's Response, Chaparral City Water Company (the "Company") does not waive its right to oppose intervention by RUCO in this docket.

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under well-settled Arizona law, permits never-ending collateral attacks on Commission decisions by aggrieved parties and effectively eliminates the statutory requirements imposed on dissatisfied parties to a rate proceeding seeking to challenge a decision of the Commission. As a result, the Town's and RUCO's proposed reading of the relevant statutes should be rejected and this matter dismissed.

A. The Company's Motion to Dismiss Properly Challenges the Legal Sufficiency and Basis of the Town's Complaint.

As an initial matter, both the Town and RUCO argue that the Company's Motion to Dismiss does not challenge the "sufficiency" of the Complaint. The term "sufficiency" is not defined in A.A.C. R14-3-106. However, the Company is challenging the legal basis for the Town's Complaint and the applicability of A.R.S. § 40-246 to the present situation. The Motion obviously challenges the legal sufficiency and basis of the Town's Complaint. See Ariz. R. Civ. P. 12(b)(1) & (6) (permitting motions to dismiss for lack of subject matter jurisdiction and for failure to state a claim upon which relief may be granted); A.A.C. R14-3-101(A) (Rules of Civil Procedure generally applicable to proceedings before Commission). As a result, the Company's Motion to Dismiss is properly before the Commission.

B. The Town's and RUCO's Reading of the Relevant Statutes Impermissibly Eliminates a Rate Case Party's Statutory Obligations if Dissatisfied With a Decision of the Commission.

The Town and RUCO fail to account for the Town's status in the present proceeding. There is no dispute that the Town was granted intervention in the Company's rate case, Docket No. W-02113A-13-0118, on August 12, 2013. [Procedural Order (8/12/2013).] Under the Commission's Rules, the Town was a "party" to that proceeding. A.A.C. R14-3-103(A) ("Parties to any proceeding before the Commission shall consist of and shall be designated 'Applicant', 'Complainant', 'Respondent', 'Intervenor', or

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'Protestant' according to the nature of the proceedings and the relationship of the party thereto").

As noted in the Company's Motion to Dismiss, and admitted in RUCO's Response, [RUCO's Response at 2 (Arizona's statutory scheme "provide[s] a remedy for a party aggrieved by a rate case proceeding")], the Arizona statutes provide the only avenue for parties to a rate case to challenge the final decision of the Commission. See A.R.S. § 40-253 (limiting claims by "any party to the action" unless an application for rehearing is filed). Under A.R.S. § 40-254.01, "any party to a proceeding before the commission who is dissatisfied with any order of the commission ... relating to rate making or rate design ... may file within thirty days after a rehearing is denied or granted, and not afterwards, a notice of appeal in the court of appeals" from the disputed order. (Emphasis supplied). In either instance, the burden is on the complaining party to demonstrate through clear and convincing evidence that the Commission's decision was unreasonable or unlawful. A.R.S. §§ 40-254(E), 254.01(A).

Here, the Town was a party to the Company's rate case.[2] As a result, the Town, if it was dissatisfied with the Decisions, was obligated to seek judicial review through the process established by the legislature. Instead, the Town now seeks, after the time has run for it to seek judicial review, a second opportunity to contest the reasonableness of the Company's recently established rates. The Town argues that A.R.S. § 40-246, which allows complaints against public service corporations outside the context of a rate case, should be read to allow the Town a second chance to contest the reasonableness of the rates approved by the Commission.[3]

[2] Even if the Town was not a party to the underlying rate case, the Commission would still not be required to re-hear the rate case, as this Complaint would still be a collateral attack on the Commission's decision, and there is no basis for what is in effect a request to re-hear the Commission's recent decision.

[3] Highlighting the impropriety of its request, the Town now seeks to use A.R.S. § 40-246 to present evidence that the rates established by the Commission are unreasonable, even though the Town did not avail itself of the opportunity to do so during the pendency of the rate case itself.

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The Town, however, has already had multiple chances to challenge the rates established by the Decisions. The Town was permitted to intervene as a party to the Company's rate case. The Town then had the opportunity, which it did not take, to present evidence and examine witnesses during the evidentiary hearings held on the Company's requested rate increase. The Commission considered all of the relevant evidence presented by the parties and then determined the rates to be charged by the Company. The Commission then considered and rejected the Town's Application for Rehearing. At that time (approximately four months ago), the Commission's Decisions became final, and the Town had the opportunity to seek judicial review of the Commission's actions. The Town elected to forego the appellate routes available to it, even though it was fully aware of the rates that were set by the Commission. If the Town is now allowed to challenge the Decisions by filing a complaint with the Commission, the statutory requirements placed on parties in A.R.S. §§ 40-253 and 254.01 have no meaning, and Commission decisions and orders will not be truly final, as parties that disagree with any order or decision rendered by the Commission would be able to simply file a formal complaint with the Commission in lieu of judicial review. Such a result is inconsistent with the statutory scheme and should be rejected. See State v. Altamirano, 166 Ariz. 432, 437, 803 P.2d 425, 430 (App. 1990) (Court should avoid statutory construction that leads to absurd result); Save Our Valley Assn. v. Arizona Corp. Comm'n, 216 Ariz. 216, 221, 165 P.3d 194, 199 (App. 2007).

C. The Commission is Not Required to Hold a Hearing in the Present Circumstances.

Contrary to the assertions in the Town's Response, the Commission is not required to hold a hearing in the circumstances presented. Nor will dismissal of the Town's Complaint under the circumstances presented render A.R.S. § 40-246 meaningless. A.R.S. § 40-246 is part of a statutory scheme that provides two separate avenues of

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review depending upon the status of the person seeking review. As explained above, parties to a rate proceeding, like the Town, are limited to seeking judicial review of Commission decisions pursuant to A.R.S. § 40-254 and 254.01. Individual consumers and certain statutorily-permitted entities (not parties to a rate proceeding) are, however, permitted to file a formal complaint with the Commission alleging that a public service corporation has violated a provision of law or order of the Commission. A.R.S. § 40-246. Only in that instance is the Commission is required to hold a hearing to determine whether the complainant can make a prime facie showing of the alleged violation. Op. Atty. Gen. No. 69-6. In the present case, no such hearing is required as the Town was a party to the rate case.

Even if the Commission denies the Company's Motion to Dismiss, which it should not, the Commission is still not obligated to hold a full evidentiary hearing on the Town's Complaint. Op. Atty. Gen. No. 69-6. The Commission has just completed a comprehensive hearing regarding the rates to be charged by the Company. That hearing considered all aspects of ratemaking. As part of that process, the Commission determined that the rates it established were just and reasonable and in the public interest. The Town has not alleged any change in circumstances justifying a new hearing with respect to the Commission's Decisions. As a result, no further inquiry is necessary with respect to the Town's Complaint.[4] See State v. Public Serv. Comm'n, 924 S.W.2d 597, 600-01 (Mo. Ct. App. 1996) (upholding public service commission's reading of similar statute to require material change in circumstances before filing of complaint to avoid impermissible collateral attack on final decision).

[4] Should the Commission nonetheless decide a hearing is necessary, such hearing should be limited to determining whether the Town can make a prime facie showing that the rates recently set by the Commission are unreasonable. Op. Atty. Gen. No. 69-6. In any such hearing, the Town should bear the burden of proof by clear and convincing evidence, just as it would had it followed the proper statutory procedure for seeking review of the Commission's Decisions. See, e.g., A.R.S. §§ 40-254, 254.01.

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D. Conclusion.

The Town's present Complaint is based on an erroneous and illogical reading of Arizona statute that subverts the review process established by the legislature with respect to rate case decisions. It also impermissibly allows a party to a proceeding before the Commission to collaterally attack a final decision of the Commission in violation of well-established Arizona law. Accordingly, the Town's Complaint should be dismissed.

Respectfully submitted this 1st day of December, 2014

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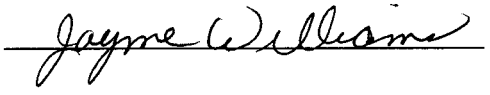

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